



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

April 29, 1952

Hon. Darwin L. Wilder  
County Attorney  
Denton County  
Denton, Texas

Opinion No. V-1439

Re: Liability of a city and  
county for personal in-  
juries sustained by em-  
ployees of their hospital  
established and operated  
under Article 4494i, V.C.S.,  
when Workmen's Compensa-  
tion Insurance is not  
carried for them.

Dear Sir:

The Board of Managers of the City-County Hospital in Denton County created pursuant to Article 4494i, V.C.S., is contemplating cancelling Workmen's Compensation Insurance for its employees. You have requested an opinion concerning the liability of the city and county for damages in cases where an employee of the hospital sustains personal injuries in the course of his employment resulting in disability or death, in the event the insurance is cancelled.

Article 4494i, V.C.S., authorizes any county of this State and any incorporated city or town within such county to jointly establish, erect, equip, maintain and operate a hospital or hospitals "for the care and treatment of the sick, infirm, and/or injured"; provides for a Board of Managers for the hospital composed of seven members, three to be appointed by the commissioners' court of such county, three to be appointed by the governing board of such city or town, and one by such court and governing body acting jointly; and prescribes their tenure of office and duties. Section 6 thereof provides:

"The Commissioners Court of such county and the governing body of such city or town may contribute to the funds necessary for such hospital or hospitals in whatever proportion may be determined by them by agreement."

A municipal corporation is a body politic

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and corporate, a public corporation and political subdivision of the State, even when incorporated under the home rule amendment to the Constitution. 30 Tex. Jur. 12-14, Municipal Corporations, Secs. 2, 3.

Counties are bodies politic and corporate. Art. 1572, V.C.S. They are political subdivisions which are created by the sovereign will for the purpose of discharging the State's duties toward its inhabitants, and are agencies or instrumentalities for the administration of matters which are of the State. 11 Tex. Jur. 524, Counties, Sec. 2.

In Hodge v. Lower Colorado River Authority, 163 S.W.2d 855, 856 (Tex. Civ. App. 1942, error dismissed upon agreed motion), the court said:

"It seems now settled that a city is immune from liability for torts of its agents and employees when acting in a public or governmental capacity; but liable where such torts occur in the discharge of some function private or proprietary in character. . . . It is equally well settled, however, that a county is a governmental agency and as such is immune from liability for all torts, just as is the State itself, unless such liability is created by statute.<sup>1</sup> . . . Immunity from liability is therefore referable not only to the character of the function performed, but also to the character of the corporation itself, and the purposes for which it was created."

In City of Wichita Falls v. Robison, 121 Tex. 133, 46 S.W.2d 965 (1932), the court held that the city was not liable for personal injuries sustained by an employee, while performing his duties, caused by the negligent acts of its officers or agents while discharging governmental functions of the city.

It has long been the law of this State that a county is not liable in damages for personal injuries sustained by its employees while in the performance of their duties caused by the negligent or tortious acts of its officers or agents. . . . Counties are created by statute, either in express terms or by necessary implication. . . . <sup>1</sup>Emphasis added throughout.

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of its officers, agents, or servants, unless liability be created by statute, either in express terms or by necessary implication. Bryan v. Liberty County, 299 S.W. 303 (Tex. Civ. App. 1927).

In City of Dallas v. Smith, 130 Tex. 225, 107 S.W.2d 872 (1937), the court held that since the State has by numerous statutes given to cities power to make rules and regulations to protect public health, to prevent spread of diseases, and to do all acts necessary for promotion of health and the suppression of disease, including the establishment and maintenance of hospitals, and, in the exercise of these powers, cities perform governmental functions as agencies of the State, they are not subject to be sued for any act or omission occurring in the exercise of such power, unless suit is authorized by statute.

The Legislature has not in Article 4494i, or any other statute, either in express terms or by necessary implication, provided that when a city and county jointly establish and maintain a hospital as provided therein, they shall be liable for damages for personal injuries sustained by their employees while in the performance of their duties in connection with such hospital caused by the negligent or tortious acts of their officers, servants or employees, or required them to carry Workmen's Compensation Insurance for such employees. It necessarily follows that they may not be held liable for such damages.

#### SUMMARY

An incorporated city and a county in jointly maintaining and operating a hospital under the provisions of Article 4494i, V.C.S.,

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are not liable for damages for personal injuries sustained by their employees, while in the performance of their duties in connection with such hospital, caused by the negligence of their officers, servants, or employees.

Yours very truly,

APPROVED:

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